

IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. REV. No.666 of 2006
MAHESHWARI PRASAD YADAV @ MAHESHWARI YADAV
Versus
THE STATE OF BIHAR & ANR

3. 30.7.2008. This application has been filed for setting aside the order dated 19.6.2006 passed by Sessions Judge, Madhepura in Cr. Revision No.150 of 2005 thereby the order of the lower court passed in Complaint Case No.770 of 2004 has been set aside and order for further enquiry has been passed.

Heard the learned counsel for both the parties.

The only submission of the learned counsel for the petitioner is that the order has been passed behind the back of the petitioner without service of notice. In this regard, the learned counsel referred to order dated 4.5.2006 and submitted that the service of registered notice was still awaiting and in the meantime on 19.6.2006 the order was passed behind the back of the petitioner.

Considered the submission of the learned counsel for the petitioner. Perused the entire ordersheet of Cr.Revision No.150 of 2005. On perusal of it, it appears that without waiting for service of notice through registered cover, the order has been passed in absence of the petitioner. The order is apparently in violation of the proviso of section 398 Cr.P.C. Section 398 Cr.P.C. runs as follows :

" 398. Power to order inquiry.- On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct

the Chief Judicial Magistrate by himself or by any of the Magistrates subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate magistrate to make, further inquiry into any complaint which has been dismissed under section 203 of sub-section (4) of section 204 or into the case of any person accused of an offence who has been discharged :

Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made."

Thus, having regard to the facts and circumstances of the case, the order in question is hereby set aside and the matter is remanded back to the court below for passing fresh order after hearing the petitioner in accordance with law. The order must be passed within sixty days of receipt of this order.

N.H./

(Ghanshyam Prasad)